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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 THOMAS ALBANESE,
11 Plaintiff,
12 v.
13 PLUMBERS & PIPEFITTERS
14 NATIONAL PENSION FUND, et al.,
15 Defendants.

Case No. 2:06-CV-01357-KJD-GWF

ORDER

16 Currently before the Court is Defendants' Plumbers & Pipefitters National Pension Fund,
17 (PPNP, or Pension Fund) and United Association of Journeymen and Apprentices of the Plumbing
18 and Pipefitting Industry of the United States and Canada's (Pipefitters Union) Motion for Summary
19 Judgment (#26), filed April 2, 2007. Plaintiff filed a Response (#37) on May 1, 2007, to which
20 Defendants filed a Reply (#38), on May 14, 2007.

21 **I. Facts and Background**

22 Plaintiff Thomas Albanese (Albanese) filed this action in state court on August 23, 2006,
23 alleging breach of contract claims against Defendants PPNP and the Pipefitters Union for wrongfully
24 temporarily suspending the deposit of his monthly pension fund.
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1 Albanese has received a pension benefit check from the National Pension Fund every month
2 since 1986. In October 2004, correspondence mailed to Albanese by the National Pension Fund was
3 returned, marked by the United States Postal Service "Return to Sender. Box Closed. No Forwarding
4 Order on File." When attempt was made to reach Plaintiff by phone, the Pension Fund learned that
5 Mr. Albanese could no longer be reached at his listed number. Upon receiving the returned mail, and
6 not being able to reach Plaintiff by phone, the Pension Fund began its internal procedure to
7 temporarily suspend Plaintiff's benefit payments. Generally, payments are suspended, or held by the
8 National Pension Fund on Plaintiff's behalf, to protect a pensioner from the possibility that their
9 pension benefits are being stolen or otherwise misappropriated. As a result of the Plaintiff's
10 temporary suspension, beginning in December, 2004, Mr. Albanese's pension benefit was not
11 deposited into his bank account. On December 15, 2004, the National Pension Fund office received
12 an update of Mr. Albanese's address from the Union. The new address was recorded as 2219
13 Rancho Drive #F1071, Las Vegas, NV 89130. Subsequently, the National Pension Fund sent
14 correspondence to Mr. Albanese's new address. Upon not hearing back from Mr. Albanese, on
15 December 25, 2004, the Pension Fund instituted its two month suspension procedure which requires
16 a notarized signature of the pensioner before reinitiating benefit payments. Pursuant to the Fund's
17 two month suspension procedures, on January 10, February 25, March 28, and again on April 21,
18 2005, the Pension Fund sent letters to Mr. Albanese at his new address requesting a notarized
19 signature card to reinstate his benefit payments and a letter explaining why his payments were being
20 held. Mr. Albanese failed to respond to any of the letters or to contact the Fund regarding why his
21 benefit payments had stopped being deposited.

22 Six months after having received the returned mail addressed to Albanese, the Pension Fund
23 initiated its six month suspension procedure that requires, in addition to a notarized signature card,
24 that a pensioner must obtain a note from a doctor indicating that the pensioner is capable of handling
25 his or her own affairs before the payment of benefits can resume.

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1 On May 2, 2005, the Pension Fund received correspondence from Mr. Albanese in which he
2 questioned why his pension benefits had stopped, and also supplied a new mailing address and
3 telephone number. The next day the Pension Fund updated Mr. Albanese's address and telephone
4 number on its database. On May 9, 2005, the National Pension Fund sent Mr. Albanese a letter
5 explaining that he would need to submit a notarized signature card and a doctor's note in accordance
6 with the six month suspension procedure in order to reinstate payment of his benefits. Upon failing
7 to receive a response, a follow up letter was sent to Mr. Albanese on June 14, 2005. On June 20,
8 2005, the Fund received a response from Mr. Albanese in which he supplied a notarized signature
9 card, but refused to submit a doctor's note. The letter also contained an update telephone extension
10 and new apartment number at the same 2219 N. Rancho Drive address.

11 By letters dated June 23, July 27, and September 30, 2005, the Pension Fund acknowledged
12 receipt of the notarized signature and explained why a doctor's note was necessary to reinstate Mr.
13 Albanese's monthly benefits payment. Additionally, a copy of the Plan of Benefits was mailed to
14 Plaintiff at that time. Plaintiff continued to refuse to submit a doctor's note. In a letter dated
15 October 5, 2005, Mr. Albanese instructed the Pension Fund not to contact him by phone, but to
16 communicate with him by letter only. After that, another five months passed before the Pension
17 Fund received any further communication from Mr. Albanese. On May 26, 2006, Mr. Albanese sent
18 a letter to the Pension Fund demanding that his benefits payments be reinstated. The fund responded
19 by explaining the reason for the suspension and why a doctor's note was required in order to reinstate
20 payment. This letter was followed up by another letter dated July 31, 2006. The Pension Fund
21 received no response to said letters. As noted above, Mr. Albanese filed a Complaint against
22 Defendants on August 23, 2006, alleging breach of contract.

23 Here, Defendants seek summary judgment under various arguments. First the Union
24 contends that they had no responsibility for the payment or administration of pension benefits, and
25 thus should be dismissed as a defendant in this action. Second, the Pension Fund claims that
26 Plaintiff has failed to exhaust the Fund's internal administrative appeals process, thus making this

1 law suit premature. Third, Defendants assert that Plaintiff has failed to prove that Defendants acted
 2 arbitrarily or capriciously in suspending Plaintiff's monthly pension benefit. Finally, Defendants
 3 contend that Plaintiff is not entitled to recover extracontractual damages.

4 **II. Standard of Law for Summary Judgment**

5 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
 6 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
 7 material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ.
 8 P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the
 9 initial burden of showing the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323.
 10 The burden then shifts to the nonmoving party to set forth specific facts demonstrating a genuine
 11 factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587
 12 (1986); Fed. R. Civ. P. 56(e).

13 All justifiable inferences must be viewed in the light most favorable to the nonmoving party.
 14 See Matsushita, 475 U.S. at 587. However, the nonmoving party may not rest upon the mere
 15 allegations or denials of his or her pleadings, but he or she must produce specific facts, by affidavit
 16 or other evidentiary materials provided by Rule 56(e), showing there is a genuine issue for trial. See
 17 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The court need only resolve factual
 18 issues of controversy in favor of the non-moving party where the facts specifically averred by that
 19 party contradict facts specifically averred by the movant. See Lujan v. Nat'l Wildlife Fed'n., 497
 20 U.S. 871, 888 (1990); see also Anheuser-Busch, Inc. v. Natural Beverage Distrib., 69 F.3d 337, 345
 21 (9th Cir. 1995) (stating that conclusory or speculative testimony is insufficient to raise a genuine
 22 issue of fact to defeat summary judgment). “[U]ncorroborated and self-serving testimony,” without
 23 more, will not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v.
 24 Aloha Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

25 Summary judgment shall be entered “against a party who fails to make a showing sufficient
 26 to establish the existence of an element essential to that party's case, and on which that party will

1 bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Summary judgment shall not be granted
 2 if a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 248.

3 **A. Standard of Review for ERISA claims**

4 The Supreme Court has established that a federal district court reviews benefit determinations
 5 or benefit denials under an ERISA plan under a *de novo* standard, “unless the benefit plan gives the
 6 administrator or fiduciary discretionary authority to determine eligibility for benefits and to construe
 7 the terms of the plan.” Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 103 (1989). When the plan
 8 grants such discretion, a disputed determination is not subject to change by the court except to
 9 prevent an abuse of the benefit fund’s discretion. Id. at 111; Peterson v. The Hotel Employees and
 10 restaurant Employees Int’l Union Welfare Fund, 288 F.Supp.2d 1145, 1148 (D. Nev. 2003).

11 When reviewing an ERISA benefit determination, the function of the district court is to
 12 determine if the benefit plan had a reasonable basis for the dispute decision based upon the facts
 13 known to the benefit plan at the time the decision was made. Jett v. Blue Cross & Blue Shield of
 14 Alabama, 890 F.2d 1137, 1139 (11th Cir. 1989). Additional facts outside of the administrative
 15 record may not be considered. Taft v. Equitable Life Assurance Soc’y, 9 F.3d 1469, 1472 (9th Cir.
 16 1994).

17 Here, the National Pension Fund’s Plan of Benefits states the following in regard to
 18 discretionary authority:

19 The Trustees shall have the sole responsibility and the sole control of the operation
 20 and administration of the Plan and shall have the full power, discretion, and authority
 21 to take all action and to make all decisions and interpretations which may be
 22 necessary or appropriate in order to administer and operate the Plan, including,
 23 without limiting the generality of the foregoing, the power, duty, discretion and
 24 responsibility to:

25 (a) Resolve and determine all disputes or questions arising under the Plan, including
 26 the power and discretion to determine the rights of pensioners, participants and
 beneficiaries, and their respective benefits, and to remedy any ambiguities,
 inconsistencies or omissions. . . .

25 (Defs.’ Mot. for Summ. J. Ex. 1 at 82.) Here, the Pension Fund’s Plan of Benefits grants the
 26 administrator broad discretionary authority to construe the terms of the Plan.

1 Moreover, Section 4 of the Plan of Benefits sets forth the authority for withholding payments.

2 It states:

3 In the event any question or dispute shall arise as to the proper person or persons to
 4 whom any payments shall be made hereunder, the trustees may withhold such
 5 payment until there shall have been made an adjudication of such question or dispute
 6 which, in the Trustees' sole judgment is satisfactory to them

III. Analysis

A. Union as a Defendant

7 The Pipefitters Union seeks that the Court dismiss them as a defendant in this action, arguing
 8 that they have no responsibility for administering Mr. Albanese's pension benefit payments from the
 9 National Pension Fund or for any decisions regarding his temporary suspension of benefits.

10 In describing how the fiduciary requirements of ERISA are intended to insulate the trust from
 11 an employer or union's interest, the United States Supreme Court has stated that section 1103(a) of
 12 ERISA vests "exclusive authority and discretion to manage and control the assets of the plan" in the
 13 trustees alone, and not in the employer or the union. N.L.R.B. v. Amex Coal Co., a Div. of Amex,
 14 Inc., 4353 U.S. § 322 (1981).¹

15 Here, a review of Plaintiff's Complaint demonstrates that Plaintiff fails to allege that the
 16 Union exercised any discretion or control over the administration of the National Pension Fund, nor
 17 has he alleged any claims against the Union. Specifically, Plaintiff's claims surround the
 18 withholding of his pension benefits, over which Defendant Union had no authority or decision
 19 making power. Therefore, the Court agrees that Plaintiff has failed to state a claim against Defendant
 20 Pipefitters Union upon which relief can be granted, and hereby dismisses them from the action.

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 25 ¹Specifically, 29 U.S.C. 1103(a) states that the assets of an employee benefit plan shall be held in trust by the
 26 trustees, and that "[s]uch trustees shall be either named in the trust instrument or in the plan instrument . . . or appointed
 27 by a person who is named a fiduciary. . . ." Here, Plaintiff has made no allegation that the Union had any authority or
 28 discretion over the plan assets or benefits.

B. Failure to Exhaust Remedies Under ERISA

The Pension Fund contends that Plaintiff's claims should be dismissed due to the Plaintiff's failure to exhaust his administrative remedies pursuant to the Pension Fund's Plan of Benefits.

ERISA requires covered benefit plans to provide administrative remedies for persons whose claims for benefits have been denied. 29 U.S.C. § 1133. The Ninth Circuit has upheld the requirement that plaintiffs in ERISA actions must exhaust available administrative remedies before filing suit in federal court. Sarraf v. Standard Ins. Co., 102 F.3d 991 (9th Cir. 1996); Diaz v. United Agricultural Employee Welfare Benefit Plan and Trust, 50 F.3d 1478, 1483 (9th Cir. 1995).

Courts have articulated sound policy for upholding the exhaustion requirement, such as the reduction of “frivolous litigation, the promotion of consistent treatment of claims, the provision of a nonadversarial method of claims settlement, the minimization of costs of claim settlement and a proper reliance on administrative expertise.” Diaz v. United Agricultural Employee Welfare Benefit Plan and Trust, 50 F.3d at 1483. Additionally, one of the purposes of the review process is to generate a “benefits determination that is thoroughly informed by the relevant facts and the terms of the plan and, if benefits are denied, includes an explanation of the details that is adequate to insure meaningful review of that denial.” Schadler v. Anthem Life Ins. Co., 147 F.3d 388, 395 (5th Cir. 1998); Amato v. Bernard, 618 F.2d 559, 568 (9th Cir. 1980) (a “primary reason” for the exhaustion requirement is that a prior fully considered record by the fund trustees “may well assist the courts when they are called upon to resolve the controversies”). The Ninth Circuit has held that “federal courts have the authority to enforce the exhaustion requirement in ERISA suits, and that as a matter of sound policy they should usually do so.” Amato v. Bernard, 618 F.2d 559 (9th Cir. 1980).

Here, the Pension Fund’s Plan of Benefits specifically details an individual’s right to appeal decisions made by the Fund Office. (See Defs.’ Mot. for Summ. J. Ex 1 Section 9.04.) However, Plaintiff has failed to produce any evidence to suggest he sought administrative review of his claim prior to filing this action. At this point in the proceeding, the Court finds that Plaintiff’s Complaint is premature, as the Trustees of the Pension Plan have not yet made a final decision regarding the

1 Plaintiff's allegations of error. The Court's role in ERISA benefits cases is to review the decision of
2 the Trustees to prevent an abuse of the Fund's discretion. Here, there has been no final
3 administrative decision for the Court to review. For this reason, the Court finds that Plaintiff's
4 Complaint should be dismissed without prejudice, in order to allow Plaintiff to proceed with and
5 exhaust his administrative remedies. If, upon exhausting administrative remedies, Plaintiff wishes to
6 file an action, he may do so, and at that time, the Court will have a full record of the Trustees'
7 decision to review under the proper standard.

8 **C. Abuse of Discretion**

9 Assuming *arguendo* that Plaintiff had met the Pension Fund's Plan of Benefits exhaustion
10 requirements, the Court finds that Defendants did not commit an abuse of discretion in temporarily
11 withholding Plaintiff's benefit payments. Even a cursory review of the facts demonstrates that the
12 Pension Fund followed its internal and published policies, and that said policies are reasonable.

13 As noted in Defendants' Motion, the Court's inquiry into whether the Pension Fund's
14 decision was arbitrary and capricious or an abuse of discretion depends upon whether their
15 interpretation of the plan document was unreasonable. Lewis v. Saint Mary's Healthfirst, 402 F.
16 Supp. 2d 1182, 1187 (D. Nev. 2005). Here, the Court finds that the Pension Fund's administrative
17 decision to temporarily suspend Plaintiff's monthly benefit payments was in accordance with its
18 internal policies—applied uniformly to all pensioners.

19 Here, Plaintiff's benefits were temporarily suspended in accordance with internal policies
20 upon his mail being returned undeliverable, and only after months of Plaintiff failing to respond to
21 the Pension Fund's attempts to locate and communicate with him. Thereafter, upon being informed
22 of the requirements to have his benefits reinstated, Plaintiff refused to comply with the Pension
23 Fund's internal policy, and provide a doctor's note. Without delving too deeply into the Pension
24 Fund's Plan of Benefits policies specifically, the Court finds that said policies appear reasonable on
25 their face due to the nature of pension benefits described in Defendants' Motion and supported by the
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1 record. Moreover, in accordance with its internal policies, the Court finds that the Pension Fund's
2 actions were reasonable.

3 **VI. Conclusion**

4 **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment (#26) is
5 **GRANTED** without prejudice.

6 DATED this 31st day of March, 2008.

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9 Kent J. Dawson
United States District Judge

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